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7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10
11 MARK OPPERMAN, et al.,
12 Plaintiffs,
13 v.
14 KONG TECHNOLOGIES, INC., et al.,
15 Defendants.

Case No. 13-cv-00453-JST

**DECLARATION OF JEFF EDWARDS IN
SUPPORT OF MOTION FOR
ATTORNEYS' FEES, ETC.**

THIS MOTION RELATES TO:

Opperman v. Path, Inc., No. 13-cv-453-JST
Hernandez v. Path, Inc., No. 12-cv-1515-JST

16
17
18 I, Jeff Edwards, declare as follows:

19 1. I am a member in good standing of the State Bar of Texas admitted to practice
20 before this Court *pro hac vice* and a principal in the law firm of Edwards Law, which has served
21 as Plaintiffs' counsel in the above-entitled putative class action lawsuit filed in this Court
22 against Path, Inc., et al. (Case No. 13-cv-00453-JST) and Related Actions. I submit this
23 declaration in support of the accompanying Motion for Attorneys' Fees, Litigation Costs, and
24 Incentive Awards. The facts set forth herein are based upon my personal knowledge and, if
25 called upon, I could and would competently testify thereto.

26 2. I am the lawyer at my firm with primary responsibility for this matter. I have
27 worked on this matter continuously since before the original complaint was filed in 2012, and
28 my firm and I have devoted considerable time and resources to the ultimate resolution of this

1 case. In the United States District Court for the Western District of Texas, I represented
2 Plaintiffs who filed a class action complaint against the Defendants Foodspotting, Inc.,
3 Foursquare Labs, Inc., Gowalla, Inc., Instagram, LLC, Kik Interactive, Inc., Path, Inc., Twitter,
4 Inc. and Yelp! Inc. (collectively, the “App Defendants”), among others.

5 3. After the various cases now before the Court were related and assigned, the Court
6 ordered an organization of plaintiffs’ counsel with our firm serving on the Plaintiffs’ Steering
7 Committee that came to include four other law firms (Doc. 400). Throughout the case, my firm
8 and I have been centrally involved in strategic decisions, drafting complaints and briefs in this
9 case, as well as client communications, discovery responses, defensive document review,
10 deposition preparation, and defense of Plaintiff depositions, especially where those tasks related
11 to any of the ten clients for whom I remain primarily responsible: Giuliana Williams (formerly
12 Giuliana Biondi), Stephanie Cooley (formerly Stephanie Dennis-Cooley), Jason Green, Claire
13 Hodgins, Gentry Hoffman, Rachelle King, Nirali Mandalaywala, Claire Moses, Judy Paul, or
14 Gregory Varner.

15 4. On or about March 31, 2017, Plaintiffs, on behalf of themselves and all
16 Settlement Class Members (as defined), entered into a Class Action Settlement Agreement (the
17 “Settlement Agreement”), a true and correct copy of which Plaintiffs have filed with the Court
18 (ECF No. 884) resolving the above-captioned action(s) against the App Defendants).

19 5. On July 6, 2017, the Court granted preliminary approval of the Settlement
20 Agreement (ECF No. 894). As the Court noted, the Settlement Agreement was the product of
21 protracted and highly adversarial litigation, spanning over five years and reflected in the case’s
22 procedural history, together with extensive and complex settlement negotiations between and
23 among the parties and their experienced and informed counsel. Included in those negotiations
24 was the involvement of a neutral third-party mediator, the Honorable William J. Cahill (Ret.),
25 from JAMS.

26 **I. BACKGROUND AND EXPERIENCE**

27 6. The Court has considered a declaration in this case covering the subject of my
28 and my law firm’s background and experience as may be relevant to the present motion. I refer

1 to my Declaration filed in support of Opperman Plaintiffs' Submission re: Organization of
2 Plaintiffs' Counsel (ECF No. 382, at 90 et seq.), I incorporate that previous declaration, and I
3 reaffirm that the previous declaration is true and correct.

4 7. Notably, after I filed my original declaration in this matter, Judge Keith P.
5 Ellison in the United States District Court for the Southern District of Texas appointed me and
6 my firm to be class counsel in a prison civil rights case seeking injunctive and declaratory relief,
7 and that class certification order was affirmed in the Fifth Circuit Court of Appeals. *See Yates v.*
8 *Collier*, --- F.3d ----, No. 16-20505, 2017 WL 3574968, at *12 (5th Cir. Aug. 18, 2017). Further,
9 I became a member of the American Board of Trial Advocates (ABOTA). To the extent
10 additional information and biographical data assist the Court, I refer to my firm's website,
11 www.edwards-law.com, which further illustrates my firm's experience in handling class actions
12 and other high profile, complex matters.

13 8. The hourly rates detailed below are comparable to those charged by similarly
14 qualified attorneys in the Northern District of California and by Western District of Texas
15 attorneys with nationwide practices. Those rates are also comparable to or less than the rates
16 indicated in the Laffey Matrix as adjusted for the San Francisco, California Area. All work
17 reported by my law firm's attorneys and staff on behalf of the Plaintiffs and Settlement Class
18 Members in this case was performed on a contingent basis.

19 **II. WORK PERFORMED BY EDWARDS LAW**

20 **A. Litigation and Settlement**

21 9. On March 12, 2012, after entering into an attorney-client relationship with
22 numerous men and women, including nine who remain named Plaintiffs today, I filed the
23 original *Opperman* complaint together with the Law Offices of Carl F. Schwenker and the
24 Jordan Law Firm. For more than ten months, before this case was transferred to this Court, my
25 firm was lead counsel in the Western District of Texas *Opperman* case, with the Law Offices of
26 Carl F. Schwenker and the Jordan Law Firm as co-counsel. Before it was related to the other
27 cases, *Opperman* expanded to encompass twelve of the named Plaintiffs who are party to this
28 settlement and all of the App Defendants who are party to this settlement (*See* ECF No. 103).

1 The App Defendants filed numerous motions to dismiss and transfer the case during this time
2 period.

3 10. On Oct. 22, 2013, this Court appointed my law firm to the Plaintiffs' Steering
4 Committee (ECF No. 400). And on July 24, 2017, this Court conditionally appointed my law
5 firm, together with the rest of the Plaintiffs' Steering Committee, class counsel in the matter
6 against the App Defendants (ECF No. 894).

7 11. During the course of this lawsuit, Edwards Law attorneys endeavored to
8 zealously represent the interests of Plaintiffs and Settlement Class Members in this action. As
9 will be seen below, my law firm devoted substantial resources to prosecuting this case on
10 Plaintiffs' and Settlement Class Members' behalf. For a law firm of our size, the commitment
11 to this case was a tremendous undertaking.

12 12. My law firm's work in this case included formulating the legal basis for
13 Plaintiffs' and the Class Members' claims in District Court in Texas; analyzing relevant facts
14 and other circumstances giving rise to these claims; conceiving a class-wide basis for asserting
15 such claims and the class-wide damages arising therefrom; discussing these claims with privacy
16 experts and other professionals; meeting with and interviewing class plaintiffs; supervising and
17 managing the drafting of several versions of the operative pleading in the case; opposing serial
18 motions to dismiss and for summary judgment directed at some or all of the claims asserted
19 against the App Defendants in the case; managing and responding to all discovery directed to
20 my firm's original clients, nine of whom remain parties to the case; preparing for, attending, and
21 taking the lead in defending depositions of numerous Plaintiffs in Texas and in California;
22 reviewing and analyzing the documents—including emails, resumes, articles, packaging,
23 advertisements, App History pages, and iPhones themselves—requested by Defendants in
24 discovery; managing and assisting Plaintiffs' answering a total of 51 distinct interrogatories and
25 142 distinct requests for production, requiring distinct responses from numerous Plaintiffs; and
26 conferring with clients and co-counsel on the administration and management of this case.

27 13. In addition to the above, my firm and I assisted co-counsel with the mediation
28 before Judge William J. Cahill (Ret.) of JAMS beginning on Nov. 1, 2016 and continuing

1 thereafter until the January 2017 notice to the Court of the parties' tentative settlement. By the
2 time of the parties' settlement in March 2017, the parties had concluded all or substantially all of
3 the pre-certification discovery in the case, Plaintiffs had moved once successfully for class
4 certification of the privacy claim against Path (ECF No. 761), and Plaintiffs had pending an
5 omnibus class certification motion of the privacy claims against all but one of the other App
6 Defendants (ECF No. 799).

7 14. During the course of the parties' mediation, my law firm and I shared
8 responsibility for communicating with Plaintiffs, primarily the ten listed herein, in an effort to
9 reach a final resolution of this case.

10 15. In addition, following this Court's preliminary approval of the Settlement
11 Agreement, I was involved in communicating with counsel on post-settlement issues as they
12 arose, as well as in communicating with the Plaintiffs regarding applications for an award from
13 this Court and submission of their claims for the settlement.

14 16. Throughout this litigation I have endeavored with my colleagues among the
15 Plaintiffs' Steering Committee to divide and manage tasks among personnel in our and other
16 firms, to prevent duplication of effort and to effectively and cost-efficiently represent the Class
17 in this matter. My law firm's time and expenses benefitted the Class, and, as such, my law firm
18 should be compensated for its work on the Class' behalf.

19 **B. Edwards Law's Lodestar for Work Performed in the Action**

20 17. In accordance with the court-ordered guidelines in this case (ECF No. 433-1), the
21 Court has received confidential quarterly reports of time spent by the law firms serving on the
22 Plaintiffs' Steering Committee as reported to co-lead counsel, detailed by attorney and category
23 of task. For purposes of this Court's so-called "lodestar cross-check" in relation to the present
24 motion, the summary report of the total hours claimed for our law firm's work in this action
25 relates to the claims against the App Defendants, and the hourly rates for my law firm's
26 attorneys and staff, for the period from October 1, 2013 through June 30, 2017 is attached as
27 Exhibit A.
28

1 18. Only the time and expenses incurred relating to the App Defendants who are
2 parties to the Settlement Agreement are reported here. Time devoted solely to Apple and others
3 not party to this settlement is excluded.

4 19. The report contained in Exhibit A indicates a total lodestar of \$629,426.00
5 reflecting a total of 1,152.0 hours for the matter – working out to about \$546.38 per hour in
6 gross – over the period October 1, 2013 to June 30, 2017. This summary was prepared from
7 contemporaneous daily time records reflecting the rates of Edwards Law attorneys as of the date
8 hereof, based on detailed reports by task of daily activities in the matter which, in addition to the
9 exclusions for time devoted to those not party to this settlement, I adjusted downward from
10 actual time reported based upon billing judgment similar to that I exercise in the normal course
11 of my law firm’s hourly practice.

12 20. The aforementioned summary reflects the following: 656.8 hours of my time
13 (J.D., University of Texas, 1999) devoted to this matter at a rate of \$650.00 per hour
14 (\$426,930.83); 21.2 hours of law partner Scott Medlock’s time (J.D., University of Texas 2005)
15 devoted to this matter at a rate of \$525.00 per hour (\$11,130.00); 450.3 hours of my associate
16 David James’s time (J.D., University of Texas 2014) devoted to this matter at a rate of \$400.00
17 per hour (\$180,106.67); and 23.7 hours of my former associate Sean Flammer’s time (J.D.,
18 University of Texas 2007) devoted to this matter at a rate of \$475.00 per hour (\$11,257.50).

19 21. As described below and reflected in Exhibit A, Edwards Law’s role is reflected
20 in the time spent in its work as counsel in this case by task, as follows:

21 A. Attorney Meetings, Strategy, and Documentation (126.3 hours – approx.
22 58% partner time, 42% associate time): Preparation and multiple in-person meetings (some
23 involving travel to San Francisco) and telephone conferences of one or more attorneys from this
24 law firm with other Plaintiffs’ counsel and Defendants’ counsel, as well as meetings among
25 attorneys from this law firm to consider case management and settlement strategy at every phase
26 and in every aspect of the case during the reporting period, together with multiple and extensive
27 written communications and memoranda on the same subjects.

1 B. Case and File Management (22.1 hours – approx. 16% partner time, 84%
2 associate time): Organization of file and client and case documents, pleadings, discovery, time
3 and expense records, etc., by one or more attorneys from this law firm, including both physical
4 and digital file and database management.

5 C. Client Meetings, Communications, and Settlement (160.3 hours – approx.
6 50% partner time, 50% associate time): Preparation for and multiple in-person meetings (some
7 involving travel to San Francisco) and telephone conferences between and among one or more
8 attorneys from this law firm and Plaintiffs and other counsel to discuss various matters relating
9 to the case and its various complaint versions, progress, discovery, deposition preparation, the
10 status of settlement negotiations, and the impact and application of the proposed Settlement
11 Agreement in this action on Settlement Class Members’ rights.

12 D. Pleadings, Court Appearances, and Research (241.7 hours – approx. 79%
13 partner time, 21% associate time): Work performed on drafting pleadings and conducting legal
14 and factual research in connection with the litigation and the preparation of pleadings and papers
15 filed with the Court on both merits and class certification subjects, together with
16 communications and memoranda on various subjects, as well as similar work during all phases
17 and many aspects of the case, the mediation process, and settlement work, as well as
18 communicating the results of said research with interested parties and counsel.

19 E. Discovery (601.6 hours – approx. 55% partner time, 45% associate time):
20 Work performed by one or more attorneys from this law firm in managing defensive discovery
21 for Plaintiffs and Class Members, developing and entering a protective order for use in the case,
22 managing and assisting with the Plaintiffs’ responses to hundreds of individual written
23 discovery requests, meeting and conferring with App Defendants’ counsel regarding multiple
24 discovery disputes and researching and drafting letters regarding said disputes, managing and
25 reviewing thousands of pages of documents in preparation for production to the App
26 Defendants, attending and defending numerous Plaintiffs’ depositions, and all preparation in
27 connection therewith.
28

EXHIBIT A

In re: iDevice Address Book Litigation, Edwards Law Time and Expense Report Regarding the App Defendants:

Foodspotting, Inc., Foursquare Labs, Inc., Gowalla, Inc., Instagram, LLC, Kik Interactive, Inc., Kong Technologies (formerly Path, Inc.), Twitter, Inc. and Yelp! Inc.

Case No. 3:13-cv-00453-JST

Firm Name: Edwards Law

Reporting Period: January 1, 2012 to June 30, 2017

Personnel Codes Task Codes:

(PC): (1) Atty Mtg./Strategy (7) Doc. Production/Review (13) Settlement
 (2) Ct. Appearance/Prep. (8) Experts - Work or Consult (14) Trial - Prep.
 (P) Partner (3) Client Comm./Mtg. (9) Rule 12 Mot.s Research/Briefs (15) Trial - Attendance
 (4) Draft Discovery Req.s/Resp.s (10) Class Cert. Research/Briefs (16) Case Mgmt./File Maintenance
 (A) Associate (5) Deposition Prep. (11) Dispositive Mot.s Research/Briefs (17) Appeal
 (6) Deposition - Take or Defend (12) Other Research/Briefing (18) Misc.

Expense Report	
Payments to PSC fund	\$ 25,000.00
Expenses aside from PSC fund	\$ 25,488.99

Time Report: January 1, 2012 to September 31, 2013

Name	PC	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	Hourly Rate	Cum. Hours	Total Fees
Jeffrey Edwards	P	111.3	15.6	27.9	0.0	0.0	0.0	0.0	15.0	148.2	16.5	8.0	228.7	10.1	0.0	0.0	9.0	0.0	19.6	\$650	609.8	\$396,370.00
Scott Medlock	P	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$525	0.0	\$0.00
Sean Flammer	A	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$475	0.0	\$0.00
David James	A	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$400	0.0	\$0.00
TOTAL:		111.3	15.6	27.9	0.0	0.0	0.0	0.0	15.0	148.2	16.5	8.0	228.7	10.1	0.0	0.0	9.0	0.0	19.6		609.8	\$396,370.00

Time Report: October 1, 2013 to June 30, 2017

Name	PC	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	Hourly Rate	Cum. Hours	Total Fees
Jeffrey Edwards	P	70.1	24.4	66.5	30.1	147.6	122.5	31.1	0.0	102.4	15.0	2.6	27.2	13.7	0.0	0.0	0.0	0.0	3.6	\$650	656.8	\$426,930.83
Scott Medlock	P	2.8	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	14.4	0.0	2.0	0.0	0.0	0.0	0.0	0.0	0.0	\$525	21.2	\$11,130.00
Sean Flammer	A	21.7	2.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	\$475	23.7	\$11,257.50
David James	A	31.7	0.0	78.5	130.4	44.8	0.0	95.1	0.0	0.0	35.2	2.6	11.9	1.6	0.0	0.0	8.1	0.0	10.4	\$400	450.3	\$180,106.67
TOTAL:		126.3	28.4	145.0	160.5	192.4	122.5	126.2	0.0	102.4	64.6	5.2	41.1	15.3	0.0	0.0	8.1	0.0	14.0		1152.0	\$629,425.00

<i>After Sep. 31, 2013:</i>	Group	Subtotal	Partner %	Associate %	<i>Before Oct. 1, 2013:</i>	Group	Subtotal	% of total
Strategy	A	126.3	58%	42%	A	111.3	18%	
Case Management	B	22.1	16%	84%	B	28.6	5%	
Client Relations	C	160.3	50%	50%	C	38.0	6%	
Pretrial & Research	D	241.7	79%	21%	D	432.0	71%	
Discovery	E	601.6	55%	45%	E	0.0	0%	
	Total	1152.0	59%	41%	Total	609.8		